

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS  
BOARD REGION FOUR**

**GRUMA CORPORATION d/b/a MISSION FOODS**

**and**

**Cases     04-CA-199438  
             04-CA-202091  
             04-CA-209548**

**UNITED FOOD AND COMMERCIAL WORKERS  
LOCAL 1776**

**GENERAL COUNSEL’S OPPOSITION TO RESPONDENT’S MOTION TO  
SEVER**

The General Counsel opposes the Motion to Sever filed by Gruma Corporation d/b/a Mission Foods (“Respondent”) with respect to the Order Further Consolidating Cases, Amended Consolidated Complaint and Notice of Hearing (“Complaint”). Respondent requests that the following allegations be severed from the remainder of the Complaint: (1) Paragraph 6(c), in which the General Counsel alleges that, about October 30, 2017, Respondent’s manager Dumas Cabral threatened to discharge an employee for questioning the legitimacy of Respondent’s disciplinary investigation of two employees who supported UFCW Local 1776 (“Union”); and (2) Paragraph 8, in which the General Counsel alleges that Respondent suspended (about October 30, 2017) and discharged (about November 6, 2017) employees Dawizon Martinez and Richard Mondesir because of their support for the Union.

The Board recently articulated the applicable legal framework for evaluating Respondent’s motion:

[T]he General Counsel has wide discretion in deciding whether to consolidate proceedings. Although that discretion is not unbounded, generally the General Counsel “may do as he thinks best,” and his decision whether or not to

consolidate is subject to review only for “arbitrary abuse of discretion.”

*McDonalds USA, LLC*, 363 NLRB No. 91, slip op. at 1 (2016) (quoting *Service Employees Local 87 (Cresleigh Management)*, 324 NLRB 774, 774 (1997)) (internal footnote omitted). Here, the General Counsel’s decision to include the allegations in Paragraphs 6(c) and 8 of the Complaint with the other Complaint allegations did not constitute “arbitrary abuse of discretion.” Ibid. Respondent’s motion is consequently meritless.

The allegations in Paragraphs 6(c) and 8 are intimately related to other allegations in the Complaint such that it would be inefficient to litigate them in a separate hearing. Thus, Paragraphs 6(a) and (b) of the Complaint allege that, in January 2017 and again in June 2017, manager Cabral threatened employees with job loss if they supported the Union. These threats are relevant to Paragraph 6(c)’s allegation that this same manager made a similar threat in October 2017 and to Paragraph 8’s allegation that Respondent carried out Cabral’s threats with regard to two pro-Union employees. Moreover, Cabral was the manager who supposedly observed the conduct for which Respondent claims it discharged the two Union supporters and otherwise had a great deal of involvement in Respondent’s discharge of them. Thus, Respondent proposes that two of Cabral’s threats to discharge employees for union activity be litigated in one hearing while a third such threat by Cabral and the actual discharge of two Union supporters at Cabral’s instigation a short time later be litigated in another. This would inevitably lead to the same issues being litigated twice. In part to avoid this inefficiency, the General Counsel consolidated the allegations. This reasonable decision was not an “arbitrary abuse of discretion” and so must be upheld. *McDonalds*, above, slip op. at 1.

Similarly, the unfair labor practices from which Respondent proposes to sever Paragraphs 6(c) and 8—which include numerous statements over an extended period of time that would

unlawfully coerce employees from choosing to be represented by the Union, bargaining with no intention of reaching an agreement during the year after the employees voted for Union representation, unlawfully withdrawing recognition from the Union, and making changes to employees' terms and conditions of employment both without bargaining and for the purpose of discouraging employees from supporting the Union—demonstrate that Respondent bore animus to the discharged employees' union activity. Were Respondent's motion granted, the parties would have to litigate these unfair labor practices twice: once in their own right and again as an element of the discriminatory discharges of employees Martinez and Mondesir. Here again, the General Counsel consolidated these allegations in part to avoid this inefficiency. Doing so was plainly not an "arbitrary abuse of discretion." *McDonalds*, above, slip op. at 1.

The General Counsel had a reasoned basis for consolidating the allegations set forth in Paragraphs 6(c) and 8 with the other allegations in the Complaint. This suffices to bring the consolidation within the General Counsel's "wide discretion." *Ibid*. The General Counsel therefore opposes Respondent's Motion to Sever and asks that it be denied.

Respectfully submitted this 12<sup>nd</sup> day of December, 2017 at Philadelphia, PA.

/s/ Mark Kaltenbach  
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